

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

MICROSOFT CORPORATION,

Plaintiff,

v.

MOTOROLA, INC., et al.,

Defendants.

MOTOROLA MOBILITY, INC., et
al.,

Plaintiffs,

v.

MICROSOFT CORPORATION,

Defendant.

CASE NO. C10-1823JLR

ORDER

On December 31, 2012, the court issued a minute order scheduling a hearing on
January 28, 2013 to address, among other things, the import of the Google-MPEG LA

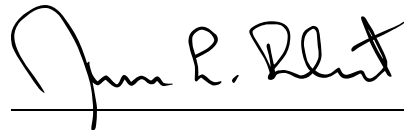
1 license agreement as it relates to H.264 standard essential patents held by Motorola
2 Mobility LLC and General Instrument Corporation, who are both now wholly-owned
3 subsidiaries of Google.¹ (12/31/12 Min. Ord. (Dkt. # 637).) In the minute order, the
4 court permitted the parties to submit, no later than January 23, 2013, (1) relevant extrinsic
5 evidence to the Google-MPEG LA license agreement; and (2) additional briefing
6 addressing any extrinsic evidence. (*Id.*) The parties contacted the court on January 17,
7 2013 and represented that Microsoft Corporation (“Microsoft”) intends to submit a
8 declaration from an individual at MPEG LA regarding MPEG LA’s understanding of the
9 MPEG LA-Google license agreement. Motorola, Inc. (“Motorola”) requests that it be
10 permitted to depose the MPEG LA declarant with respect to the opinions offered in the
11 affidavit, but Motorola admits that such a deposition will not take place prior to January
12 23, 2013. Microsoft opposes Motorola’s request to depose the MPEG LA declarant.

13 The court heard from the parties on January 18, 2013. The court agrees with
14 Microsoft and denies Motorola’s request to take the deposition of the MPEG LA
15 declarant. First, the MPEG LA declarant is in no way a surprise witness. Indeed, counsel
16 represented during the hearing that Motorola contacted MPEG LA after the court’s
17 December 31, 2012, minute order. Motorola thus could have noticed and taken the
18 deposition of MPEG LA regarding MPEG LA’s understanding of the Google-MPEG LA
19 license agreement at any time since the court’s minute order, but chose not to do so.

21 ¹ At the January 28, 2013, hearing, the court will also hear argument on Microsoft’s
22 motion for summary judgment that certain Motorola patents are invalid as indefinite. (Microsoft
Mot. (Dkt. # 205).)

1 Additionally, it cannot be surprising that MPEG LA would have an opinion as to the
2 interpretation of its own agreement with Google. Second, permitting the late deposition
3 of MPEG LA will prejudice Microsoft and impact the court's schedule and ability to
4 adjudicate issues before it. Microsoft will be compelled to file its briefing on the import
5 of the Google-MPEG LA license agreement without the opportunity to address any
6 statements made by the MPEG LA declarant at the deposition. Similarly, because
7 Motorola admits that any deposition of the MPEG LA declarant will not take place until
8 after the January 23, 2013, briefing deadline, the court will be unable to weigh competing
9 briefs from the parties regarding statements made during the deposition. Accordingly,
10 the court denies Motorola's request to take the deposition of the MPEG LA declarant
11 after the January 23, 2013, deadline set by the court to submit such evidence.

12 Dated this 18th day of January, 2013.

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15 JAMES L. ROBART
16 United States District Judge
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